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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,335	10/31/2003	Anthony J. Cafferata	J-3763	5399
28165	7590	09/05/2007		
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			EXAMINER FIDEI, DAVID	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 09/05/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

mn

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/699,335

Applicant(s)

CAFFERATA ET AL.

Examiner

David T. Fidei

Art Unit

3728

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 August 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____
Claim(s) objected to: _____
Claim(s) rejected: _____
Claim(s) withdrawn from consideration: _____

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


David T. Fidei
Primary Examiner
Art Unit: 3728

Continuation of 11. does NOT place the application in condition for allowance because: The Supreme Court has provided guidelines for determining obviousness based on the Graham factors. *KSR Int'l v. Teleflex Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007). "A combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* at 1731, 82 USPQ2d at 1396. "When a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability." *Id.* For the same reason, "if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill." *Id.* at 1740, 82 USPQ2d 1396.

In the present instance the improvement offered by Perkins is the teaching of a display "blister pack" with an article enclosure 20 having a depth that is comparable to the depth of support structure 22 in order to prevent the package 10 from falling over while not making the base excessively deep so as to occupy unnecessary shelf space, col. 3, lines 8-12. Having a depth of the enclosure that is the same as, or equal, that of the base or support structure 22 is comparable in the strictest meaning of the term. Hence it is not seen where Perkins fails to teach a bottom portion or foot equal in depth to an additional projecting portion of the package as argued by Applicant. Furthermore, the self-indexing feature is nothing more than this relationship, i.e., the depth of the additional projecting portion equal that of the bottom or foot. By teaching an article support portion of the blister package that is comparable in depth to that of the base Perkins also teaches the self-indexing feature inasmuch as is claimed and disclosed. Merely modifying Humphrey by providing a base with a depth comparable to that of the additional projecting portion would have been *prima facie* obvious for the aforementioned reasons.

Applicant argues that if the claimed invention was so well developed in the art or obvious to one skilled in the art that an explicit teaching or suggestion thereto would be present in the art, pages 2 and 3 of the response. However, it is well settled the claimed invention need not be expressly suggested in any one or all of the references. Rather, the test for obviousness is what the combined teachings of the applied references, taken as a whole, would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981) and *In re McLaughlin*, 443 F.2d 1392, 1395, 170 USPQ 209, 212 (CCPA 1971). It is not only unlikely, but conclusive, that one would not have an explicit teaching of a claimed invention in the prior art where the invention is obvious. By its very nature a finding of obviousness necessarily implies an explicit teaching of the claimed invention is lacking. That, in and of itself, is not sufficient to overcome the holding.

With respect to the combination of Udwin in view of Perkins and Glassman, it is acknowledged Udwin fails to show a bottom portion which extends outward further than any other portion extending outward. As such it is not sufficient to overcome the finding of obviousness as the holding is based on a combination of references. The issue being it is what the combination of references taken as a whole suggests that is pertinent. Perkins is suggestive of the self-indexing feature, i.e., a bottom portion or base that has a depth comparable to the depth of any other outwardly extending portion. For the same reasons as articulated above with respect to Humphrey to provide Udwin with similarly configured sections of comparable depth would have been *prima facie* obviousness. In addition Glassman teaches feet 38, 40, 76, 78 for allowing the package to freely stand in the upright position as shown in figure 1 for display purposes. To employ such a feature in Udwin would have been obvious for this reason.